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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316
21999	7590	09/16/2005	EXAMINER	
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120			LASTRA, DANIEL	
			ART UNIT	PAPER NUMBER
			3622	
DATE MAILED: 09/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/832,282	OLSEN ET AL.	
	Examiner	Art Unit	
	DANIEL LASTRA	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

Response to Amendment

2. In response to Non Final Rejection filed 04/06/2005, the Applicant filed a request for reconsideration. Applicant's amendment overcame the Section 101 rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 12-21, 23 and 26-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Landau et al (US 2002/0082919).

As per claim 1, Landau teaches:

A method of unilevel marketing and distribution comprising the steps of:

a computer receives personal information regarding a referred customer from a sales representative (see paragraphs 50)

a computer stores the received personalized information in a database (see paragraph 50);

a computer incorporates said personal information into promotional material (see paragraphs 57, 65, 66; 102, 105; figure 7), distributing said promotional material directly to the referred customer from a centralized distributor (i.e., affiliate server 260; see paragraphs 50, 65 and 66)

a computer receives orders from referred customers, wherein said orders include means for identifying the sales representative and a computer stores the purchase order information in a database crediting the sales representative with a sale from the distributed promotional goods (see paragraphs 21, 72).

As per claim 2, Landau teaches:

The method of claim 1, wherein the personal information received from the sales representative is received over the world wide computer network using a web page accessed by the sales representative (see paragraph 50).

As per claim 3, Landau teaches:

The method of claim 1, teach wherein the personal information includes a personalized message from the sales representative (see figure 7, item "Welcome Gretta")

As per claim 4, Landau teaches:

The method of claim 1, teach wherein the sales representative is paid a commission for being the sale representative who referred the customer making the purchase (see paragraph 21).

. As per claim 5, Landau teaches:

The method of claim 1, wherein said personal information is received over the Internet (see paragraph 50).

As per claim 6, Landau teaches:

The method of claim 1, but fails to teach wherein the personal information is received via E-mail (see paragraph 50).

As per claim 7, Landau teaches:

The method of claim 1, wherein the personal information is received via a telephone (see paragraph 50).

As per claim 12, Landau teaches:

The method of claim 1, wherein the personal information is received by a distributor is stored in machine memory (see paragraph 50; affiliate server, figure 2, item 260).

As per claim 13, Landau teaches:

The method of claim 1, wherein the personal information received from the sales representative is stored in a customer database (see paragraph 50).

As per claim 14, Landau teaches:

The method of claim 1, teach wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see figure 7).

As per claim 15, Landau teaches:

The method of claim 1, wherein the customer purchases over the Internet (see paragraph 72).

As per claim 16 the same rejection applied to claims 2 and 13 is applied.

As per claim 17 the same rejection applied to claim 2 is applied to claim 17.

As per claim 18 the same rejection applied to claim 3 is applied to claim 18.

As per claim 19 the same rejection applied to claim 5 is applied to claim 19.

As per claim 20 the same rejection applied to claim 6 is applied to claim 20.

As per claim 21 the same rejection applied to claim 7 is applied to claim 21.

As per claim 26 the same rejection applied to claim 12 is applied to claim 26.

As per claim 27 the same rejection applied to claim 13 is applied to claim 27.

As per claim 28 the same rejection applied to claim 14 is applied to claim 28.

As per claim 29 the same rejection applied to claim 15 is applied to claim 29.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919).

As per claims 8 and 22, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in an audio form. However, Official notice is taken that it is old and well known in the

computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 9, Landau teaches:

The method of claim 1, but does not expressly teach wherein the promotional materials are in printed form. However, Official Notice is taken that it is old and well known in the computer art to print emails in paper form using a computer printer. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that users of the Landau's system would print emails in paper form so said users have accessed to said emails when not connected to the Internet.

As per claims 10 and 24, Landau teaches:

The method of claim 1, but fails to teach wherein the promotional materials are in a video presentation format. However, Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landau et al (US 2002/0082919) in view of Hammons (US 6,477,509).

As per claims 11 and 25, Landau teaches:

The method of claim 1, but fails to teach wherein the personal information provided by the sales representative includes the customer's age, interests, income level, or household. However, Hammons teaches a system that target promotions to customers based upon said customers' age, interest or income level (see Hammons column 2, lines 15-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Landau would use the customers' age and income levels, as taught by Hammons to better target advertisements to said customers.

Response to Arguments

5. Applicant's arguments filed 07/07/2005 have been fully considered but they are not persuasive. Applicant argues that Landau is not a reference that may be cited against the present application because the Applicant's application has a filing date of March 10, 2001 and the information relied upon the Examiner is new to Landau and cannot find support in provisional application 60/201,041 from which it depends. The Examiner answers that the Applicant's priority date is April 10, 2001 and not March 10, 2001 and although the Examiner agreed with the Applicant that he cannot find support in provisional application 60/201,041, Landau claims benefit to provisional applications 60/201,041 and 60/246,544 and the Examiner relied upon provisional application

60/246,544 (filed on November 6, 2000) to teach the Applicant's claimed invention. The Section 101 rejection has been withdrawn.

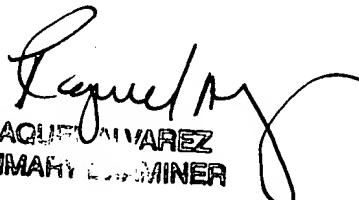
Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The Examiner's Right fax number is 571-273-6720.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.L.
Daniel Lastra

September 11, 2005


RAQUEL M. VAREZ
PRIMARY EXAMINER